

STATEMENT OF EDWARD B. COHEN, DEPUTY SOLICITOR, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE CONCERNING S. 1419, TO DEEM THE ACTIVITIES OF THE MICCOSUKEE TRIBE ON THE TAMIAMI INDIAN RESERVATION TO BE CONSISTENT WITH THE PURPOSES OF THE EVERGLADES NATIONAL PARK

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Mr. Chairman and members of the committee, thank you for the opportunity to present the views of the Department of the Interior on S. 1419, a bill to deem the activities of the Miccosukee Tribe on the Tamiami Indian Reservation to be consistent with the purposes of the Everglades National Park, and for other purposes.

The Department opposes S. 1419 in its current form. Although we agree with the basic objectives of the bill to provide for Tribal occupation of Park land in perpetuity, and to permit more autonomy for the Tribe, we feel the bill is overly broad. It authorizes tribal activities without limitation within Everglades National Park. It removes park management authority and National Park Service resource protection standards and regulations. Although this area is referred to as the Tamiami Reservation (reservation), the land is part of Everglades National Park, and would remain so under this bill. This creates an inherent land use conflict. We believe any legislation should balance Tribal objectives with the resource protection needs of the Park.

Mr. Chairman, I am pleased to report that the Tribe and the Department have been engaged in serious, detailed and constructive discussions to develop a legislative proposal which meets the Tribe's current and future needs while protecting the interests of Everglades National Park and the restoration of the South Florida ecosystem. While we have not yet reached final agreement, we have made very substantial progress. The agreement that we are developing would provide

significant autonomy for the Tribe in managing its own affairs on the special use permit area but, in contrast to S. 1419, would define with particularity the rights and obligations of the Tribe.

The Miccosukee Tribe has occupied land within Everglades National Park by special use permit since 1962, and in that time has constructed a modern community of houses and other buildings including a school, a clinic, government buildings and other structures. The Department supports the rights of the Miccosukee to occupy this land in perpetuity, and agrees that the Tribe should be allowed to exercise more autonomy than is provided by the existing special use permit.

However, this bill, as drafted, fails to protect the unique resources of Everglades National Park.

The special use permit area occupied by the Tribe is 5 1/2-miles long by 500 feet wide, and consists of 333 acres. It encompasses land along the northern boundary of the Park, and runs perpendicular to the flow of the Shark River Slough, the principal source of fresh water into Everglades National Park. Currently, four large water delivery gates control Shark River Slough water flows into the park. Discharges from two of these structures, S 12A and S 12B, flow through the permit area.

The federal government, the state of Florida, the Miccosukee and Seminole Tribes, and others are embarking on an effort in excess of \$7 billion to restore the Everglades. S. 1419, however, fails to ensure that the development activities of the Miccosukee Tribe within the park do not work at cross-purposes with park preservation and ecosystem restoration. There are significant differences between S. 1419 and the bill that we are currently negotiating with the Tribe. For example, unlike S. 1419, our bill would make clear that the Tribe would be required to comply with the water quality requirements of the State of Florida, one of our partners on the Everglades

restoration initiative, because the land at issue is park land as opposed to reservation land. The enforcement of Florida water quality laws is the cornerstone of the existing federal litigation and the major catalyst in the restoration effort.

Water delivered at the right time, and the right place is the lifeblood of Everglades National Park. There are, however, no explicit obligations to assure that the Tribe's activities do not disrupt the quantity, timing, or distribution of surface or groundwater into the park. Unlike the bill that we have been discussing with the Tribe, S. 1419 does not ensure that fresh water flow ways through the special use permit area and into the park, would be maintained. The bill does not prevent propagation of exotic plants or animals, nor does it limit the height of buildings that could be constructed, or harmonize tribal activities with the core interests of the Park.

The bill that we are negotiating with the Tribe emphasizes the importance of protecting the park resources while giving the Tribe autonomy to manage its own affairs. S. 1419 does not provide this protection, but simply declares that the governance of the special use permit area by the Tribe "shall be deemed consistent with the purposes of Everglades National Park". S. 1419 validates any activity the Tribe may choose to undertake, leaving no limitations other than the generic authority applicable to all parties under statutes such as the Federal Water Pollution Control Act and the Endangered Species Act.

In addition, the bill would double the size of the existing special use permit area, from 333 acres to 666 acres without addressing the National Park Service's concerns for the hydrologic or wildlife ramifications or implications on the experience of visitors to Shark Valley visitor use area,

an area frequented by 40 percent of park visitors. While the Department is open to discussing an increase in size of the existing permit area, an increase in size should also take into account hydrologic, wildlife, and visitor considerations.

Finally, Mr. Chairman, much of the land encompassed by Everglades National Park was donated to the federal government by the State with a clause providing that the land would revert to the State in the event it is not used for park purposes. We believe that any legislation enacted by Congress should be mindful of this right of reverter.

In closing, the Department recognizes the need to modify the existing permit, and replace it with a new legal framework which respects Tribal sovereignty and acknowledges the Tribe's desire to live in the park in perpetuity while protecting and restoring the everglades and Everglades National Park. We are currently working with the Miccosukee Tribe, and would be pleased to work with the Committee, to achieve these goals.

Mr. Chairman, this concludes my prepared remarks. I will be glad to answer any questions you or other members of the committee may have.